

**COMPLIANCE BOARD OPINION NO. 94-8**

October 26, 1994

*Mr. William Wills*

The Open Meetings Compliance Board has considered your complaint of August 14, 1994, concerning a meeting of the Ocean City Council on June 6, 1994. You also asked the Compliance Board to review what you characterize as "the City Council's general propensity to hold a great number of 'executive sessions.'"

The essence of your concern about the events on June 6 may be gleaned from a newspaper article and an editorial (from *Ocean City Today*) that you submitted with your complaint. Evidently the City Council had been closely divided over the issue of whether to install parking meters in the city. The matter was expected to come to a head at the open meeting on June 6. That open meeting turned out to be something of an anti-climax, however, because discussions before the open meeting revealed that a majority of council members opposed the installation of the meters. Therefore, the council perceived no need for a full-scale debate on an issue that had effectively been resolved.

The key point, for purposes of the Open Meetings Act, is the circumstances under which these prior discussions occurred. According to the newspaper account, the City Council President, Rick Meehan, gained his awareness that a council majority opposed installation of the meters "from discussions between individual council members" the week preceding the meeting. Again quoting the newspaper article, a second member of the council, Jim Mathias, "acknowledged there was some discussion about the meters prior to the public meeting, but he did not know whether it occurred during the executive session [immediately preceding the open meeting], which was called to discuss a legal matter." Yet a third member of the council, George Feehley, asserted that "[t]he decision to kill the meter plan was made in a closed-door meeting prior to the public proceeding ...." The newspaper editorial went further, asserting that the council "met before the public session under the guise of discussing 'legal matters,' took a straw vote to see where each stood on the meter issue and proceeded to map out how the subject would be addressed before the public."

If the version of events recounted by Mr. Feehley and the newspaper editorial were correct, then the Open Meetings Act was violated. The proposal to place parking meters was embodied in a proposed ordinance, and discussion of the ordinance would be a "legislative function" under the Act. See §10-

502(f) of the State Government Article. Since no exception under the Act would have applied to a discussion about the merits of the proposal, such a discussion could not lawfully have occurred in closed session.

In a timely response on behalf of the City Council, however, Guy R. Ayres, III supports Mr. Meehan's recollection of events – that is, the key discussions occurred between individual council members, not at a council meeting: "To my knowledge all the political arm twisting and lobbying occurred either by phone or personal contact during [the week preceding the June 6 meeting]. There was never a quorum of councilmembers present, but it was the typical one-on-one discussion that legislators generally have on prospective legislation."

Mr. Ayres indicates that a closed "executive session" of the council was held prior to the open meeting on June 6 to discuss litigation matters and for Mr. Ayres to provide legal advice on certain issues. With respect to the parking meter issue, Mr. Ayres describes the discussion in the closed session as follows:

The Council President then asked me if the parking meter issue had to come up since it was on the agenda. I advised that typically I would bring it up as an ordinance for first reading, but that if there was no motion passed there would be no debate on the floor. Two councilmembers indicated that they wanted to discuss the lobbying tactics employed, and I advised that they could do that even though the ordinance was not passed upon. The closed session was adjourned.

If the discussion in the closed session was limited to Mr. Ayres' rendering advice about the procedural posture of the parking meter issue, there was no violation of the Act, for §10-508(a)(7) authorizes the council to "consult with [its] counsel to obtain legal advice."

The Open Meetings Compliance Board is not an adjudicatory body with compulsory process or other tools for conducting a factual inquiry. The Board has no way to resolve differing recollections among the participants of the exact nature of the discussion at the closed session on June 6. Thus, the Board can do no more than indicate the legal effect of the respective versions of what occurred.

One conclusion can be definitively stated however: The Act was not applicable to whatever discussions may have occurred between any two members of the council prior to the meeting, because no quorum was present at those discussions. The definition of "meet" incorporates the requirement that a quorum be present. §10-502(g). The Compliance Board agrees with Mr. Ayres' summary: "The open meeting law requires, with certain exceptions, that the council as a body meet in open session. The law does not preclude politicking and lobbying, individually, outside the meeting."

With respect to your concern about the meeting practices of the City Council generally, Mr. Ayres correctly points out that the council is authorized by law to close discussion of pending or potential litigation matters. §10-508(a)(8). As noted above, the council is also entitled to close a meeting in order to obtain legal advice from Mr. Ayres, and he reports that he provides such advice very frequently. If the City Council heeds faithfully to the limitations of these exceptions, *see* Compliance Board Opinion No. 93-11 (November 30, 1993), then it may continue its pattern of frequent closed "executive sessions."

OPEN MEETINGS COMPLIANCE BOARD

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